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Committee on the Elimination of Racial Discrimination
Ninety-second session

Summary record of the 2627th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 1 May 2018, at 10 a.m.

Chair: Ms. McDougall (Vice-Chair)
later: Mr. Amir (Chair)

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In the absence of the Mr. Amir (Chair), Ms. McDougall (Vice Chair) took the Chair.

The meeting was called to order at 10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined seventeenth to twenty-third periodic reports of Nepal (CERD/C/NPL/17-23 and CERD/C/NPL/Q/17-23) (*continued*)

1. *At the invitation of the Chair, the delegation of Nepal took places at the Committee table.*

2. **Mr. Dhital** (Nepal) responding to questions raised by the Committee in the previous meeting, said that he regretted that a lengthy period had elapsed since his country had last submitted a periodic report or an updated core document. He would ask the Committee to consider, however, that Nepal had experienced a violent conflict between 1996 and 2006, which had been followed by a protracted transition. That period, characterized by rapid and turbulent change and a lack of clear political direction, had prevented the Government from fulfilling all its reporting obligations. However, the political context had now stabilized and a successful transformation had taken place, culminating in the adoption of a democratic Constitution that provided an excellent framework for the protection and promotion of human rights. The Government was now in a better position to fulfil its commitments and intended to submit a new core document at the earliest opportunity.

3. Nepal had many unique characteristics and was geographically and ethnically diverse. Districts with a low human development index and poor infrastructure and socioeconomic development indicators were classified as "backward", which was the term used in the Constitution. Most such districts were in the mountainous far west of the country. To address the problem of underdevelopment, the Government had designed a support programme to mobilize national and international resources. It had also identified the most vulnerable communities and provided assistance for Dalit and indigenous families and people living in remote areas. Dalit children benefited from monthly cash grants and free education programmes and school lunches, which in food-poor areas served as an incentive for them to attend school.

4. In response to the concern expressed by the Country Rapporteur regarding the composition of the delegation and the absence of experts from the capital, he wished to point out that the recently elected Government was preoccupied with many domestic concerns and with activities that were key to the successful implementation of the new Constitution. In particular, the new governance structures established at the local, provincial and national levels needed to be developed and strengthened, which meant that the Ministry of Federal Affairs and General Administration — the entity responsible for coordinating the implementation of the Convention — was the busiest ministry. For that reason, he had been asked to represent Nepal in the dialogue with the Committee.

5. Regarding the interpretative declarations in respect of articles 4 and 6 of the Convention, at the time that Nepal had ratified the Convention, it had been a monarchy with a unitary system of government that had restricted certain rights; the declarations had been appropriate in that context. However, the new Constitution and current laws were more in keeping with the spirit of articles 4 and 6. He undertook to consult with officials in the capital with a view to determining whether the declarations might be withdrawn. Concerning the possibility that Nepal might ratify further human rights conventions, the Government preferred to focus on strengthening its implementation of the 24 human rights instruments — including 7 core international human rights treaties — to which the country was already a party. While it was willing to consider ratifying additional instruments in the future, for the present time the Government's priorities were capacity-building, the domestication of international conventions and the effective fulfilment of its reporting requirements.

6. All Nepalese people, irrespective of class, creed, ethnicity or religion, had been consulted on the new Constitution, and the final text reflected their aspirations. The period leading up to the adoption of the Constitution had been lengthy precisely because the

consultation process had been so extensive. The Nepalese Constitution was the most democratic and human rights-oriented such document in the world. The formation of a stable Government had now paved the way for its effective implementation.

7. Concerning the representation of Dalits and indigenous peoples in the public service and the judiciary, he recalled that, in the past, women had been severely underrepresented in the civil service as a whole, except in the health sector. Affirmative action had been taken to address that situation and positive outcomes were being achieved. For example, women's presence in the diplomatic service had steadily increased so that now almost a third of diplomatic staff were women, and women from minorities were serving in high-level positions. Civil service recruitment was carried out in accordance with the reservation system, whereby 45 per cent of vacancies were set aside for various groups, including women, Adivasis/Janajatis, Madeshis, Dalits, persons with disabilities and persons from backward areas. A specific percentage of posts was allocated to each of those groups, with the result that diversity among public officials was increasing year by year.

8. Nepal had outlawed the caste system in 1963, thus banning the practice of untouchability, and efforts to tackle the problem had since gained additional momentum. The Criminal (Code) Act, the Criminal Procedure (Code) Act and the Sentencing Act, all passed in 2017, clearly defined all elements of discrimination, including untouchability, and specified penalties in proportion to the severity of the crime. As a result, perpetrators were punished and victims had access to remedies, including compensation. More importantly, social awareness of caste-based discrimination had increased, creating an environment in which Dalits could realize their rights. However, there were still disparities between the cities, where inhabitants enjoyed a strong sense of equality and community, and rural areas where education levels were likely to be lower and where illegal practices might persist. The Government was attempting to solve the problem by reaching out through local mechanisms and structures in order to promote attitudinal changes. Local governments had been empowered to act and to take decisions independently, with a view to bringing government closer to the people who best understood the situation and the needs and issues affecting their locality. While there continued to be major resistance to inter-caste marriage in rural areas, society was changing quickly. He knew of higher-caste women who had married Dalits, for example, and suffered no loss of status, something that would have been unthinkable 10 or 20 years earlier. Although it took time to change people's mindsets, especially in areas where the level of education and awareness was low, significant progress had been achieved, and the Government remained sincere and serious in its efforts to bring about such change.

9. The Caste-based Discrimination and Untouchability (Offence and Punishment) Act of 2011 had been enacted in order to address the unfair situation affecting Dalits, who made up a significant proportion of the population. Committees had been established at the national and local levels to coordinate the law's implementation. Under the Act, anybody who practised untouchability or who engaged in degrading or discriminatory treatment of another individual for reasons related to caste, whether in public or in private, was subject to punishment. The number of reports of such treatment had been rising, and such complaints were taken seriously by Government officials. It was not true that law enforcement officers failed to investigate them. However, there was a need for greater awareness about the possibility of making a complaint. The local government restructuring made it more likely that cases would be reported because victims would no longer have to make long and costly journeys in order to lodge a complaint.

10. In accordance with the Constitution, no citizen could be denied a citizenship card. The procedures for obtaining such cards were set out in the relevant laws. The Constitution also contained provisions enabling the acquisition of citizenship by children of Nepalese women who were married to foreigners. The Births, Deaths and Other Personal Events (Registration) Act of 1976 and Rules of 1977 had introduced compulsory birth registration, which had improved government record-keeping, thereby facilitating the acquisition of citizenship. Birth registration was carried out by local governments. There was an incentive of 1,000 rupees for Dalit families who registered a birth within 35 days. If any Nepalese citizens lacked a citizenship card, it was most likely because they had not applied for one. The cards were readily granted whenever someone applied. The National Identity Card

Management Center, under the Ministry of Home Affairs, was preparing an online database of all citizens in order to facilitate identification and provide services based on individual needs. To date, almost half of the population had been registered in the identity database.

11. An inclusive education policy was being implemented and an "education for all" campaign was being launched with a view to ensuring that all children attended school and continued their education. The school drop-out rate among indigenous and Dalit children was a concern, and incentives had been put in place to encourage them to continue their education. The Government provided scholarships to indigenous and Dalit students, and there was a quota system to ensure that members of disadvantaged groups could pursue studies in technical fields such as engineering.

12. The Government had previously provided 100,000 rupees to couples who entered into inter-caste marriages with a view to encouraging such marriages. However, that incentive had been looked upon unfavourably by society and consequently had been abolished. Uncontroversial incentives that did not rely on an individual's choice of spouse and that benefitted society as a whole were considered to be more appropriate.

13. The Madheshi Commission and the Tharu Commission had been established by law and were soon to be launched. The Dalit Commission was being strengthened and would start to operate more at the district level. The requirements of those commissions were being taken into account in the ongoing government restructuring process, and every effort was being made to ensure that they had the necessary resources.

14. Human rights education was now an integral part of law enforcement training, and officials were made fully aware of their duties and responsibilities in that regard. Over 350 training events and workshops had taken place in 2018, with the participation of 84 human rights experts. Outreach and awareness-raising programmes had been established, information materials and press releases had been issued and a culture of human rights was being fostered in the country. The media were playing a central role in exposing human rights violations, and law enforcement officials were responding quickly to such cases.

15. The Government was providing refugees with as much support as possible, given the socioeconomic conditions in the country. Refugees were provided with identity cards for international travel and, where appropriate, assisted with third-country resettlement. The basic social, economic and cultural rights of refugees in Nepal were respected.

16. The planning for the Kathmandu Valley road expansion project had begun many years earlier. An expansion was necessary because the city had grown considerably, both in terms of geographical area and population. All those whose homes or property had been demolished to make way for the expansion had been compensated on an equal footing. A multilevel prior consultation process had taken place. Furthermore, the Government had complied with all orders of the Supreme Court related to the project. The road expansion had not negatively affected any one group in particular; indeed, it was in the interests of all groups living in Kathmandu.

17. Child marriage had been outlawed in the country and was less common than it had previously been. Nevertheless, it still occurred in some remote rural communities. The legal minimum age for marriage was 20 for both men and women. The Government was taking steps to raise awareness of the law and of the socioeconomic benefits of delaying marriage.

18. Regarding the matter of indigenous people allegedly having been jailed for participating in protests, Nepalese law guaranteed the right of all to express their views and assert their rights in a peaceful manner. In order to maintain harmony between ethnic groups, the Government did try to discourage groups from engaging in acts that might be considered to be highly provocative, but it in no way condoned arbitrary detention.

19. **The Chair** said that she would like to congratulate the State party on its new Constitution and on the deep reforms that had been undertaken. While welcoming the information provided on the steps taken to increase the representation of women in decision-making positions and implement a gender-responsive budget, she would like to know how many indigenous, Dalit or other ethnic minority women had benefitted from those initiatives. Regarding the system of quotas in place in the country, she wondered what percentage of positions were being filled by ethnic minorities. For example, were reserved

positions in higher education institutions and the Government actually being filled by Dalits or indigenous persons? If not, what action was the Government taking to rectify the situation? It was important to remember that devolving responsibility for the elimination of harmful traditional practices to local governments did not absolve the national Government of all responsibility. She would be interested to hear further details on the Kathmandu Valley road expansion project and the consultation process that had taken place with the communities whose lives had been disrupted by the project. The Committee would like information regarding incarcerated indigenous leaders — specifically, why they were in jail, what charges they faced and whether trials had taken place. If trials had not taken place, they should be freed immediately.

20. **Mr. Calí Tzay** (Country Rapporteur) said that, having visited Nepal four years previously and met with a range of indigenous, Madheshi and Dalit organizations as well as government authorities, he had the impression that there was a gulf between the reality on the ground as reported by civil society and the situation as perceived by the Government. All but 5 per cent of the 683 proposed hydroelectric projects in the Kathmandu region were located on indigenous lands and would result in the displacement of millions of persons and have a negative impact on hundreds of sacred cultural and religious sites, which was a major cause for concern. Similarly, the Kathmandu Valley road expansion project would forcibly displace more than 150,000 people, 95 per cent of them belonging to the Newar indigenous people. Many had already reportedly been displaced without any compensation. He was also concerned about reports that the Nepal Army, as the contractor for the construction of the expressway in Khokana, was deploying troops to occupy sacred indigenous sites and private lands, sometimes by force.

21. The Committee had been informed that some indigenous traditions and rituals were criminalized in Nepal. For example, as the consumption of beef was prohibited under Nepalese law, indigenous persons whose cultures did not consider the cow a sacred animal had been imprisoned for eating beef, and the Supreme Court had issued an order to blacklist any lawyer who brought cases related to the slaughter of cows. Such acts were contrary to article 4 of Constitution, which provided that Nepal was a secular State. The Committee was also concerned at reports of gender-based discrimination against and particularly high rates of uterine prolapse among Dalit women and of malnutrition among women belonging to various minorities.

22. The delegation had asserted that caste-based discrimination was no longer practised, and yet it had also reported that three committees had been established to deal with such discrimination, which seemed a contradiction. He would be interested in learning more about the role of those commissions. He would also like to hear more about the commission established pursuant to article 295 (3) of the Constitution to determine the number and boundaries of the village bodies, municipalities and special, protected or autonomous regions. The delegation might comment on reports that, although there were penalties for racial discrimination, judges sometimes put pressure on plaintiffs to withdraw their complaints because they were against a member of a higher caste, and that inter-caste marriages continued to carry social stigma. He would be interested to hear about any plans to change the school curriculum to eliminate content that was pejorative and discriminatory against Dalits and indigenous peoples. Lastly, he recommended that the State party should take advantage of the training and capacity-building provided by the Office of the United Nations High Commissioner for Human Rights to support its efforts with regard to the ratification of further human rights instruments.

23. **Mr. Dhital** (Nepal), referring to the question about the school curriculum, said that, although Nepali was a lingua franca, instruction in other languages was permitted, provided they had a written form. The major infrastructure projects being undertaken in the State party were intended to benefit the population as a whole. Particular ethnic groups were not concentrated in any given area but rather were scattered throughout the country; hence, the projects would not have an impact on any single group. The groups affected by the Kathmandu road expansion project, for example, were not predominantly indigenous peoples. The Government attached great importance to the cultural heritage of all the peoples of the Kathmandu Valley, and the country as a whole, and would take the necessary steps to preserve it. It was true that some houses had had to be demolished to make way for

road expansion activities, but those affected had been properly consulted beforehand and had received compensation. The Army personnel in charge of the project in Khokana had not used force; rather, they were engaged in a process of dialogue and consultation with the affected community. Women who suffered uterine prolapse received free support and care from medical teams deployed to areas where the condition was most common.

24. Mutual respect, understanding and tolerance were part of the culture of Nepal, and members of all ethnic groups were free to practise their own religions and traditions. There were, however, a number of sensitive issues in Nepalese culture, the slaughter of cows being one of them. While individuals were entitled to follow their own customs, the public slaughter of cows or consumption of beef was likely to offend the sensibilities of those who revered the cow as a sacred animal. In order to maintain harmonious relations, it was important to be respectful of prevailing culture practices.

25. Caste-based discrimination was prohibited by law and under the Constitution, and anybody who practised it was subject to punishment. Nonetheless, certain traditional practices and beliefs persisted, although they were not condoned. The three committees were tasked with raising awareness of the negative effects of certain practices and expediting the process of attitude change in all sectors of society. Several institutions, such as the National Human Rights Commission and the National Inclusion Common, monitored the human rights situation in the country and performed a watchdog function, bringing violations to light and recommending intervention when needed. Although their capacity was increasing, it would take time to fully build the capacity necessary to handle all the complex, intersectional issues at stake.

The meeting was suspended at 11.50 a.m. and resumed at 12.05 p.m.

26. **Mr. Murillo Martínez** said that he would welcome an update on the distribution of the population across rural and urban areas. In 1994, when the country's common core document had been submitted, 80 per cent of the population had lived in rural areas, and he wondered if that situation had changed. Expressing concern at the light penalties for offences related to caste-based discrimination, he asked whether the State party had considered reversing the burden of proof for such crimes. He would also like to know whether racism or racial discrimination was an aggravating circumstance for other criminal offences.

27. **Mr. Avtonomov**, stressing the need for structural change to overcome the problems associated with the caste system, said that he would welcome further information, including statistics, on efforts being made to bring about such change. He would also be grateful for details of action being taken in relation to such issues as preservation of the ancestral lands of indigenous peoples and the provision of education in languages that did not have a written form. In addition, he would be interested to hear about any activities undertaken or planned as part of the International Decade for People of African Descent. He also wished to know whether the State party had considered ratifying the amendment to article 8 of the Convention.

28. **The Chair** said she wished to know whether the State party had considered making a declaration under article 14 of the Convention to recognize the competence of the Committee to receive individual communications.

29. **Mr. Diaby** said that he would welcome information concerning the State party's plans to support the land tenure rights of peasant farmers and communities who were at risk of having their land seized without proper compensation. He noted that, notwithstanding the existence of threats against the Dalit community and violations of their rights, the National Dalit Commission seemed to engage solely in oversight and to be bereft of the authority required to take effective action. He wondered whether the State party had considered expanding the Commission's mandate to enable it to offer effective protection to the community. Given the continued existence of threats against people who supported inter-caste marriage, he would also be interested in learning whether the State party envisaged imposing harsher sentences on persons responsible for caste-based discrimination.

30. **Ms. Chung** said that she had visited Nepal several times in 2007 in her capacity as Special Rapporteur on discrimination based on work and descent. Many members of the Dalit community, especially women, had complained of being subjected to multiple forms of discrimination. With that in mind, she would like to know whether the Dalit minority was properly represented among policymakers in the State party. Time was obviously needed to combat discrimination and, in particular, to change mindsets. Nevertheless, even while endeavouring to bring about such change, it was important to take measures to address discriminatory practices. She would appreciate more detailed information on the action undertaken by the State party in that regard.

31. *Mr. Amir took the Chair.*

32. **Mr. Dhital** (Nepal) said that 80 per cent of the population of Nepal still lived in rural areas and 20 per cent in urban areas. Urbanization was proceeding slowly in many areas, but the rural population remained sizeable. Some locations were quite remote and isolated, but they had recently been linked to the rest of the country through modern means of communication and transport networks.

33. The principle that all persons were equal before the law was enshrined in the Constitution. The penalties imposed for discriminatory practices did not depend on a person's status but on the nature and severity of the crime. Perpetrators of discrimination-related offences were held accountable. There might occasionally be instances when the requisite action was not taken against offenders, but they were exceptional and steps were being taken to minimize their occurrence.

34. With regard to the ancestral land of the Adivasis/Janajatis, he noted that Nepal was a party to the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). It held consultations and dialogues with communities and households that might be affected by major projects undertaken in any part of Nepal. A mechanism was in place to enable local communities to benefit from the proceeds of such projects. The preservation and development of land tenure rights was a serious issue, particularly because land availability averaged only 0.7 hectares per household. The Government was well aware that, if a family was dispossessed of such a small piece of land, it would face serious difficulties that needed to be addressed.

35. With regard to inter-caste marriage, individuals were free to marry whom they wished, and the State stood ready to provide them with protection and support whenever necessary. In traditional areas there might still be problems, but major changes were taking place in social attitudes and values. Rising levels of awareness and of economic and social development were contributing to those changes. The Government was implementing a targeted anti-discrimination programme focusing on the Dalit community, especially Dalit women and girls, for whom it was promoting education. The older generation had lacked educational opportunities, but schools were now located in all neighbourhoods and families were encouraged to enrol their children in educational institutions and to prevent them from dropping out.

36. The Constitution contained clear provisions regarding proportional representation. Women and representatives of the Adivasi/Janajati and Dalit communities had won seats in the 2017 elections and were represented at the local, provincial and national level. A system of affirmative action and quotas had been introduced to promote the employment of persons belonging to vulnerable groups, and progress was being made in enabling women and others to find decent employment.

37. The Government assumed responsibility for handling cases relating to caste-based discrimination and untouchability. Vulnerable groups were encouraged to raise their voices so that their problems could be addressed in a timely and more effective manner. As lack of resources posed constraints among such groups, the Government was focusing on poverty reduction and elimination. Nepal had not yet considered recognizing the Committee's competence under article 14 of the Convention.

38. **Mr. Cali Tzay** said that the Committee had taken note of the progress achieved by the State party and of its determination to forge ahead and bring about the necessary changes. Legal norms were an important means of regulating citizens' conduct, although

they should not seek to impose specific views or beliefs, but should respect citizens' diverse views. Persistent areas of concern for the Committee included the disproportionate application of laws on treason and sedition to indigenous peoples, the situation of indigenous detainees in some regions, persistent discrimination against Dalits, unequal access to education and health services and unequal participation in political affairs.

39. **Mr. Dhital** (Nepal), expressing appreciation of the Committee's constructive engagement with the delegation, said that the insightful views and expertise of Committee members would be of great value to his Government as it continued to strive to promote and protect the rights of all vulnerable and disadvantaged groups. The delegation had sought to shed light, in a spirit of partnership and cooperation, on the challenges ahead and plans to tackle them effectively. It would clearly take some time to guarantee all the rights enshrined in the Convention and the new Constitution. The cross-cutting nature of existing issues demanded a more holistic approach. Primary responsibility lay with the State, but civil society and international development partners could play an important role in assisting Nepal in fulfilling its pledge under the 2030 Agenda for Sustainable Development to leave no one behind.

The meeting rose at 1 p.m.